

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Superannuation Industry (Supervision) Act 1993

*Superannuation Industry (Supervision) Amendment (Your Future, Your Super—
Improving Accountability and Member Outcomes) Regulations 2021*

Subsection 353(1) of the *Superannuation Industry (Supervision) Act 1993* provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019* (the Amending Act) introduced measures to increase the amount and quality of information available to superannuation fund members and other stakeholders. These included the requirement for superannuation funds to hold ‘annual members’ meetings’, which provide a forum where the key aspects of the fund are discussed and where members may ask questions about the fund’s performance and operations. Other amendments in the Act strengthened the rules prohibiting the use of goods or services by a trustee to influence an employer’s decision to nominate a superannuation fund as their default fund, or to encourage their employees to nominate the fund as their chosen of fund.

The *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—
Improving Accountability and Member Outcomes) Regulations 2021* (the Regulations) support the above amendments.

Schedule 1 to the Regulations prescribes the information that must be provided with a notice for an annual members meeting. These requirements apply in relation to an annual members’ meeting for each year of income that ends on or after the commencement of the schedule.

Schedule 2 to the Regulations removes an exception to the revised prohibition influencing employers.

The proposed amendments and explanatory statement were released for public consultation for four weeks, from 28 April 2021 to 25 May 2021. In response to stakeholder comments changes were made to the regulations and explanatory statement to clarify what information registerable superannuation entity (RSE) licensees must attach to the notice, and to ensure RSE licensees provide meaningful information to members.

Details of the Regulations are set out in [Attachment A](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence the day after the instrument is registered.

A regulation impact statement (RIS) was undertaken in relation to the primary legislation, the Amending Act. The scope of that RIS included any regulations which would prescribe information to be provided to members.

The regulatory impact for the primary law measures, including any regulations made, were estimated to have a start-up cost of \$8.5 million and ongoing costs of \$13.7 million which result in an estimated annual compliance cost impact, averaged over 10 years, of \$14.6 million.

The RIS can be found in the Revised Explanatory Memorandum to the Amending Act.¹

A statement of compatibility with human rights is at [Attachment B](#).

¹ Available at https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1089_ems_a4005a44-80b2-4de5-af80-d849a5013fd2/upload_pdf/699630.pdf;fileType=application%2Fpdf

ATTACHMENT A

Details of the *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Improving Accountability and Member Outcomes) Regulations 2021*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Improving Accountability and Member Outcomes) Regulations 2021*.

Section 2 – Commencement

The Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The Regulations are made under the *Superannuation Industry (Supervision) Act 1993* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1—Annual Members’ Meeting Notice Requirements

Section 29P of the Act requires that the registerable superannuation entity (RSE) licensee of a RSE hold an annual meeting of members for each year of income of the entity. RSE licensees are also required to give notice of the meeting to all members of the RSE, and provide any information prescribed in regulations with the notice of the meeting.

Annual members’ meetings allow discussion of the key aspects of the fund and provide members with a forum to ask questions about all areas of the fund’s performance and operations.

These requirements do not apply to a superannuation fund with less than seven members, an excluded approved deposit fund, a pooled superannuation trust, or an eligible rollover fund.

Schedule 1 to the Regulations amends the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) to prescribe the information that must be included with the notice of the meeting. This information must be provided by the RSE licensees for all RSEs that are required to hold an annual members’ meeting.

The amendments apply prospectively to any notices that relate to a year of income that ends on or after the amendments commence (being the day after the Regulations are registered).

Information that must be provided with the notice of annual members' meetings

The amendments insert Division 2.2 into Part 2 of the SIS Regulations, which sets out the requirements for information that must be provided with a notice of an annual members' meeting. Providing this information with the notice of an annual members' meeting empowers members by ensuring they are sufficiently informed and equipped to ask questions about all areas of the fund's performance and operations at the annual members' meeting. This is consistent with the Government's broader objective of increasing transparency and accountability across the superannuation system, to ensure better member outcomes for all Australians.

The information that trustees must provide to each member includes the periodic statements that are already required to be given to the member, details of certain information that is already required to be made publicly available under the SIS Regulations, and other information relating to expenditure by the fund.

The amendments also allow for details to be provided about where information can be accessed by members as an alternative to separately providing the information.

The information that must be included with the annual members' meeting notice and is already required to be made publicly available under the SIS Regulations is:

- a summary of each significant event or material change notice (if any) given within the previous 2 years;
- remuneration details of executive officers;
- the annual report of the superannuation entity (where such a report is required to be produced);
- the most recent annual outcomes determination for the superannuation entity.

The other information relating to the expenditure of the fund that must be included with the annual members meeting notice relates to:

- marketing expenses;
- political donations;
- payments to industry bodies or trade associations; and
- payments to related parties.

Further details about the types of information that must be provided are provided below.

Providing details about publicly available expenditure information

The amendments allow for details to be provided about where information can be accessed by members as an alternative to providing the information separately.

This would include information that is already publicly available (either because it is required to be published under another provision, or is voluntarily published by the RSE licensee), as well as information that is only accessible by members (for example through a member portal where the information can be accessed).

Allowing RSE licensees to provide these details instead of providing the information in full with a notice of an annual members' meeting ensures that RSE licensees have appropriate flexibility in providing information to members in a user-friendly and cost effective manner.

Short-form summary of certain aggregate amounts

To assist members in understanding the information that is provided to them, RSE licensees must also provide members with a short-form summary of certain information that is to be included with the notice.

This summary is to include the aggregate amounts of certain categories of information that are to be disclosed to members with the notice. These categories cover the remuneration details of executive officers, as well as the other categories of expenditure of the fund. Each amount is the aggregate amount relating to that disclosure item for the income year to which the annual members meeting relates.

To assist with readability, the summary must be presented on a single page and be the only information that is presented on that page.

Notices of significant events or material changes

Subsection 1017B(1A) in the *Corporations Act 2001* (the Corporations Act) requires issuers of a financial product to notify the holder of the financial product of any significant event or a material change to the matters specified in a Product Disclosure Statement for the product. A summary of each significant event or material change notice that is given to product holders within the previous 2 years must be made publicly available on the website of the relevant RSE pursuant to regulations made under subsection 29QB(1) of the Act.

The details of where such summaries are made publicly available must be included with the annual members' meeting notice provided to members.

Remuneration details for executive officers of an RSE licensee

The information provided with an annual members' meeting notice must specify where the remuneration details for the RSE licensee's executives are made publicly available as at the time of the notice is given.

Regulation 2.37 of the SIS Regulations sets out the requirements for reporting remuneration details for RSE licensee executive officers and individual trustees on RSE websites, including salary, bonuses, non-monetary benefits, superannuation benefits, termination payments and other non-monetary benefits as required under paragraph 29QB(1)(a) of the Act.

This information is consistent with the remuneration details that must be published in relation to the key management personnel of an ASX listed company. However, in

contrast to key management personnel the remuneration details in regulation 2.37 apply to all executive officers.

This information must also be provided as an aggregate figure in the short-form summary document explained above.

Annual Report

If the trustee or trustees of a RSE produces an annual report for the entity, the RSE licensee must provide the details of where the report is made publicly available.

This requirement reflects the fact that the production of annual reports is not mandatory for all RSEs. However, to the extent they are produced, annual reports are publicly accessible.

Annual outcomes assessments

The Amending Act imposed a requirement, through the covenants in section 52 of the Act, on the trustees of a regulated superannuation fund (other than regulated superannuation funds with no more than six members) to make annual determinations for each MySuper product and choice product offered by the fund.

Such determinations must be published on the fund's website within 28 days of the time they are made.

The Regulations require details of where such determinations are or will be published to be provided to members.

If a determination has been made but not yet published when the notice is issued, but is to be published before the meeting, the RSE licensee must provide information about where the determination will be made publicly available. This takes into account that the determination may be published in the time between the notice being issued and the meeting itself.

If the most recent determination will not be published before the meeting is held, RSE licensees are required to provide members with details of how to access the previous annual determination. This takes into account that the timing of the meeting may not align with the timing of the annual determination.

Trustees may choose to align the publication of their determinations so that they can be discussed at an annual members' meeting.

Periodic statements and other information

Section 1017D of the Corporations Act requires the issuer of certain financial products, including superannuation products, to provide periodic statements to the holders of those products. Section 1017DA of the Corporations Act allows for further requirements about providing other information to the holders of a superannuation product.

The information provided with a notice must include either a copy of the most recent periodic statement or recent information given to the member under these

provisions, or details about where that statement or information can be accessed by the member.

Marketing and sponsorship expenses

The information provided with a notice must include an itemised list of the value of contracts entered into in relation to promotion, marketing and sponsorship expenditure that are active in the year to which the annual members meeting relates, and the term of the contracts.

Marketing expenditure can include sponsorships, expenditure on public facing materials to promote the entity or promote a particular view on behalf of the entity, promotions to attract new members to the entity and advertisements on the investment options a fund offers or the investment strategy of a fund.

Disclosure will enable members to ask questions about the purpose and value of this expenditure. The aggregate amount paid by the RSE licensee under marketing contracts in the year to which the annual members meeting relates must be provided as an aggregate figure in the summary document.

Political donations

The information provided with a notice must include an itemised list of all gifts (within the meaning of the *Commonwealth Electoral Act 1918*) made by the trustee to political entities and/or those registered under s 287L of that Act.

This information must also be provided as an aggregate figure in the short-form summary document explained above.

Payments to industry bodies or trade associations

The information provided with a notice must include an itemised list of all payments made to industry bodies or trade associations, which are required to be registered under section 26 of the *Fair Work (Registered Organisations) Act 2009*.

This information must also be provided as an aggregate figure in the short-form summary document explained above.

Payments to related parties

The information provided with a notice must include an itemised list of all payments made to certain related parties. Related parties include connected entities of the RSE licensee, an associated entity of a connected entity of the RSE, an entity over whom the RSE licensee has significant influence, and an entity that has significant influence over the RSE licensee.

Information about payments to entities that share key management personnel or executive officers with the RSE licensee, or associates of those entities must also be disclosed.

The provision of this information in the notice is to ensure members have visibility over payments made to the related entities of the RSE and can ask questions about the purpose of such payments.

This information must also be provided as an aggregate figure in the summary document explained above.

Requirement for giving notice of annual members' meetings

Paragraph 29P(3)(c) of the Act allows regulations to prescribe the manner in which an RSE licensee should provide a notice of an annual members' meeting and other accompanying information to members.

RSE licensees are generally required to provide information to members about the management, financial condition and investment performance of the fund under paragraph 1017DA(1)(a) of the Corporations Act. Regulation 7.9.75A of the *Corporations Regulations 2001* (the Corporations Regulations) requires that the information provided under paragraph 1017DA(1)(a) of the Corporations Act be provided in writing, electronically or in a manner agreed by the member or member's agent. This could include, for example, information being published on a fund's website.

If an RSE licensee is required to provide information under paragraph 1017DA(1)(a) of the Corporations Act in a particular manner to members, they must also provide notice of an annual members' meeting and the accompanying information in the same way. For example, if the RSE licensee provides this information via email, they must also provide the annual members' meeting notice via email. If the member has agreed a specific method of receiving information provided under paragraph 1017DA(1)(a) of the Corporations Act, the annual members' meeting notice and accompanying information must also be provided in that manner.

This ensures that RSE licensees have consistent obligations for providing information to members, and members do not need to enter separate arrangements for providing such information.

Where information provided under 1017DA(1)(a) of the Corporations Act is made available on a website, regulation 7.9.75BA of the Corporations Regulations provide that the trustee must ensure the information is readily accessible on that website and explain to the member how to access the information.

Where an RSE licensee does not have to provide information under paragraph 1017DA(1)(a) of the Corporations Act, then the notice of an annual members' meeting and the accompanying information must be provided in writing.

In addition to providing information to members directly, the Regulations also require RSE licensees to make the notice of the annual members meeting publicly available, and readily accessible by members, on the RSE's website. Where the RSE licensee chooses to provide the required information to members via linking to a webpage, that webpage must be active and viewable at and from the time the annual members' meeting notice is sent to members.

Consequential amendments

The amendments expand existing regulation 2.04 of the SIS Regulations to include new Division 2.2. This ensures that RSE licensees are taken to have satisfied the requirements to provide information with notice of an annual members' meeting if they have made reasonable steps to provide the information to members.

This treatment is consistent with the existing arrangements for information that is required to be given for each reporting period under Division 2.4 and information on request under Division 2.5.

Schedule 2 – Use of goods or services to influence employers

Schedule 2 to the Regulations amends the SIS Regulations to remove an exemption from section 68A of the Act.

The general rule in section 68A of the Act originally prohibited the trustee or associate of the trustee of a regulated superannuation fund from offering or refusing to supply a good or service to an employer on the condition that their employees must become members of the fund.

Regulation 13.18A of the SIS Regulations prescribes exemptions from section 68A, including paragraph 13.18A(1)(d) that allows a trustee, or associate of the trustee to supply a good or service to an employer. However, the supply or offer must be available to all of the employer's employees who are members of the fund and the terms of the supply or offer to each employee must be no less than the terms offered to the employer.

These rules in section 68A of the Act were strengthened through Schedule 9 of the Amending Act. The amendments replaced the previous prohibition on actual conditions on becoming a member with a lower standard about an offer being 'reasonably expected to influence' an employer's choice to nominate the superannuation fund as the default fund or encourage their employees to nominate the fund as their choice of fund.

Item 2 of Schedule 2 repeals paragraph 13.18A(1)(d), as it is not considered appropriate in the context of the new rules. The exception was based on the assumption that there are no issues with an employer receiving a supply if it is equally available to their employees who are members of the fund.

The amendments lower the threshold from an actual condition for employees to become fund members, to a likelihood of a supply influencing an employer to select their fund as a default fund for their employees. This made the exemption in paragraph 13.18A(1)(d) inappropriate.

For example, a fund may provide discounted computers or offer low-cost insurance to an employer with an intent of influencing an employer's decision to nominate the fund as a default fund for employees. This is not relevant to the fact that these benefits are also extended to employees who are member of the superannuation fund. The Regulations remove the exemption and disallow the ability of a trustee, or associate of a trustee, to influence an employer through the use of goods and services.

Item 3 of Schedule 2 prescribes that the amendments made by this Schedule apply in relation to the provision of goods or services, or the refusal to provide goods or services, that occur on or after the commencement of the Regulations.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Superannuation Industry (Supervision) Amendment (Your Future, Your Super—Improving Accountability and Member Outcomes) Regulations 2021

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative Instrument supports the amendments made by the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019* by amending the *Superannuation Industry (Supervision) Regulations 1994* to prescribe the information that must be included with the notice of an annual members' meeting and to remove an exception to the revised prohibition upon using goods or services to influence employers.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.